

## The Legal Implications of Testing

Dr. Stephen P. Barrett, President  
The Career Assessment Center, Inc.  
435 West Tenth Street  
Erie, Pennsylvania 16502

### Abstract

With the increased use of testing in Business, Industry, Job Training Programs and Education, the liability issues also increase. Greater emphasis must be placed upon validity, reliability, norm data, test selection, test administration, test interpretation and credentials of the professional involved.

The Legal Implications paper defines such terms as "Assessment" and "Testing", as well as the technical elements of test development for the practical test administrator. Interest surveys, I.Q. tests, Standardized Achievement tests, aptitude tests (including work sample systems), and Personality Surveys are described, along with typical mis-uses of these instruments and the potential danger of mis-interpretation.

The legal implications are highlighted, including who's liable, along with practical suggestions of how to prevent legal action.

Finally, the paper summarizes a Vocational Assessment process which, if implemented properly, will give the evaluator relevant information for quality decision-making and protect them from potential law suits.

### Introduction

Vocational Assessment, in recent years, has become as common as basic skills in schools, skill training in Private Industry Councils and performance evaluations in Industry. It seems as if everyone is now involved in some aspect of vocational testing and evaluation. The term "assessment" has been mis-interpreted over and over again, ranging from "the same as testing" to "the valuation of property." The purpose of this paper is to:

1. Define Assessment as it relates and compares to testing and vocational evaluation.
2. Highlight current uses and mis-uses of commercially developed tests and their impact on education, labor and industry.
3. Discuss some of the legal implications of testing and liability issues as they relate to vocational evaluators, Boards of Directors and funding agents.
4. Describe an assessment model as a prototype process for Vocational Evaluation.

### Definitions

For the purpose of this paper, it is important to distinguish between assessment and testing. Too often, these terms have been used interchangeably, when, in fact, in the opinion of this author, they are far apart.

- **Assessment** is defined as a multi-dimensional "process" to observe and judge a person in action. Multi-dimensional is referred to as "more than one" means of measurement, including, but not limited to, testing (both psychometric and work tasks), professional counseling and professional observation.
- **Testing** is defined as a measuring "product" designed to give statistical data which, in turn, is used as a part of the Assessment Process. Tests should typically be used as a resource and a "means to an end" rather than the end product.

### Types of Testing

Several testing areas will be discussed in terms of their effective uses and mis-uses in Vocational Assessment. Specific examples of uses, or should I say mis-uses, in schools, job training programs, and industry will be highlighted. The typical types of testing to be discussed are:

1. **Validity** - In a general sense, validity refers to the degree to which the test items measure what they're supposed to measure. However, in a specific sense, the vocational evaluator needs to be well informed on statistical manuals which describe, or should describe the research and statistical base for:
  - **Content Validity** - The degree to which test items measure what they're supposed to measure.
  - **Construct Validity** - The degree to which tests or work sample systems compare to similar tests or work sample systems.
  - **Job Training Analysis** - The degree to which tests or work sample systems relate specifically to actual jobs or training programs.
2. **Reliability** - The degree to which the test results are consistent over a period of time.
3. **Norming** - The data base upon which to compare the demographics of populations with like populations.

### Common Mis-Uses of Testing

Testing is generally mis-used in more cases than not. This section is designed to describe specific examples of how the interpretation of test scores are often misleading and could result in making inaccurate decisions about an individual's status, and may end up in a lawsuit.

1. **Psychometric Testing (Paper/Pencil)** - In the opinion of this author, the only valid results that can be drawn from paper/pencil instruments are Reading and Mathematical Achievement scores. Test companies, for example, have produced paper/pencil tests that are intended to measure functional aptitudes, such as spatial perception, form perception, etc. "Aptitudes" are defined as innate functional potential. The term "functional" refers to actually being able to do something, such as manipulating hand and finger movements. The aptitudes can best be measured through a series of actual work tasks rather than paper/pencil instruments.
2. **Competency Tests for Youth** - As a former educator with the Pennsylvania Department of Education, I had the opportunity to work with a program entitled "Project 81" - designed to develop a statewide life-role competency system as requirements for high school graduation. One competency statement developed by one of the pilot school districts was: "students should be able to change a flat tire." One of the testing companies that was competing for a bid to develop a

state-wide competency test, developed sample multiple choice tests items that followed pictures and diagrams depicting the wheel, lug nuts, tire iron and jack. The only outcome of this approach could, in some cases, show that a student could identify the objects necessary to change a flat tire. A false assumption could then be made that those who could identify the objects, could also actually change the tire. The danger here, which exists in many paper/pencil aptitude tests, is clearly a lack of "content validity" . . . the item does not measure what it is intended to. The only way to measure this type of competency is to observe and judge a person actually changing the tire.

3. Competency Tests for Teachers - Many states have already instituted state-wide competency tests for teachers. Two major validity questions are raised by these tests:

- 1) Does the test actually and accurately measure what it intended to measure?
- 2) What specific traits, abilities, aptitudes, etc. make an effective teacher?

If we analyze these questions in terms of typical state-wide tests, we have to make the assumption that to be a good teacher, one must merely know the subject matter that they're teaching. The competency tests, since they are typically paper/pencil, can only measure knowledge of subject matter, such as English, Science, Math, Social Studies, etc.

To assess teachers accurately, we must first establish the criteria for a good and effective teacher, which might include such areas as motivation, compassion, the ability to communicate, the ability to establish rapport, etc. Once the criteria is established, we must then define how these areas can be measured. Perhaps a performance assessment via observation might be worth consideration.

4. The Interest Survey - These instruments are the most commonly used tests in our high schools today, and, perhaps, the most biased and inaccurate. Individuals taking these can only give positive opinions based upon the amount of exposure they have had prior to taking the exam. This exposure is primarily based upon their immediate environment . . . peers, family, etc. Little or no exposure results in inaccurate results, yet some of the most profound decisions that are made with young people today are a direct result of these limited surveys.

A final point for consideration on Interest Surveys relates to the dilemma of a person enjoying or liking certain tasks, yet not capable of performing these tasks in a competitive labor market and vice-versa.

5. The Personality Survey - A common problem exists with both the Personality Instruments and Interest Surveys . . . opinions can vary at the will of the test taker. For example, if I were given a personality survey as part of a company's procedure for selection of "Manager," I could respond in accordance with my perception of what the company might be looking for, rather than how I really felt.

On the other hand, Personality Survey's are typically reliable, if taken honestly, because personalities generally do not change unless a major, significant event takes place in one's life, such as the loss of a loved one, separation, or loss of a job.

6. Standardized Achievement Tests - The major question relating to Standard Achievement Tests is: "Do the results of these instruments indicate what the test taker knows or does not know; or, perhaps, might not have been taught?" You get what you teach for! Students will have a better chance to respond to items correctly, if, in fact, the concepts have been taught to them.

I have often been asked if I am a proponent of "teaching to the test," and I consistently answer, "absolutely!" A typical question I ask the airlines when I travel is, "Has the pilot been taught how to fly the plane?" If the objectives of a test are solid and the curriculum is designed to teach the objectives, then, in fact, we must teach to the test.

7. Work Sample Systems - Work Sample Systems are designed to measure the basic aptitudes defined by the U.S. Office of Labor and Industry. The major problem that exists with work sample systems is they tend to be contaminated with multiple aptitudes. They are not developed to measure one aptitude. Basically, it requires two or more aptitudes to complete the task, making it difficult for the evaluator to determine which aptitude is prevalent. For example, a work sample designed to measure spatial perception, may require a person to have form perception and finger dexterity in order to complete the task adequately. The outcomes will require the evaluator to make a judgment on which aptitude prevails.

#### The Legal Implications

As Vocational Assessment becomes more common in our society, the possibility for law suits based upon discrimination, inaccurate test results and unqualified evaluators becomes greatly enhanced. This section will outline a few suggestions designed to protect the evaluator, agency or company and Boards of Directors for the purposes of testimony, defense and deposition.

1. Define the Purpose for Testing . . . Placement?; Diagnosis?; Career Potential or Change?; Prediction of Success?
2. Develop training or job specifications for which the vocational assessment process is designed to measure.
3. Test Selection . . . Select appropriate tests that are:
  - Characteristic of the population to be tested
  - Free of bias and discrimination
4. Relate Evidence of Validity, Reliability and Norm Data to particular usage.
5. Test Administration and Interpretation . . . Ensure professional administration and interpretation of test results by qualified evaluators:
  - Know the Manuals
  - Include Background Information
  - Give Directions exactly as prescribed
  - Establish appropriate test conditions
6. Describe how test results are used in the decision-making process.

### Putting It All Together

In an attempt to put the pieces of the Vocational Assessment puzzle back together, this section will describe the essential components of a quality assessment.

Vocational Assessment, again, is a multi-dimensional process of observing and judging a person in action. Valid and reliable testing instruments should be used to assist the professional evaluator in gathering appropriate data for decision-making.

**What to Measure** - There are four basic areas of measurement in Vocational Assessment:

1. **Functional Aptitudes** - measured by integrating paper/pencil instruments with selected work samples.
2. **Interest** - measured by survey, supported and verified through counseling and observation of work tasks.
3. **Achievement** - measured by commercially developed, valid and reliable paper/pencil instruments.
4. **Personality** - measured by survey, supported and verified through counseling and professional observation.

**Methods of Assessment** - The primary method of a quality vocational assessment should be individualized, with no more than three clients to one evaluator. As mentioned previously in this paper, the process should be multi-dimensional to include the integration of work samples with psychometrics, counseling, observation, verification, and documentation.

**Report Writing and Recommendations** - The Vocational Assessment Report should be complete and professional. The report should summarize the test results, purpose of the assessment and make appropriate recommendations for implementation. The recommendations should be precise, succinct and defended by the data presented in the report.

### Summary Statement

In the final analysis, Vocational Assessment is not an easy process, but, perhaps, the most important decision-making activity an individual may experience throughout their lives. It should be taken seriously and professionally. There are no short-cuts or "quick" ways to conduct a quality assessment. Professional counseling and observation are, perhaps the most valid ingredients in the Vocational Assessment process. Legal protection is accomplished by good common sense, professional (certified) evaluators and valid, reliable test instruments. Defining the purpose of the Vocational Assessment will start every process in the right direction. Finally, test scores should be interpreted carefully and cautiously and only used as a resource and guide to the decision-making process. If we allow the test scores to become more important than the individual, we have defeated the entire purpose and focus of the Vocational Assessment Process.

### About the Author . . .

Dr. Stephen Barrett is currently President and Chief Executive Officer of the Career Assessment Center, Inc., with offices in Erie and Butler, Pennsylvania. He is recognized as a management consultant specializing in the research, planning and development of customized testing strategies for Business and Industry, Educational Institutions, Private Industry Councils, and Business and Industry. He has over 16 years of management and operations experience in the business and education industries.

Prior to co-founding the Career Assessment Center, Dr. Barrett was Associate Director of the Management Services Division for the Northwest Tri-County Intermediate Unit. He has also served as a Basic Education Associate for the Pennsylvania Department of Education and has held several counseling positions. He currently serves a consultant to the National Vocational Assessment Training Center of Ohio State University.

Dr. Barrett is a graduate of the State University of New York at Buffalo and holds Degrees in Psychology, Counseling and Curriculum Research and Planning. He is Professor of Vocational Psychology for the Graduate School of Gannon University and serves on the Board of Directors for the Erie County Private Industry Council, Sarah A. Reed Corporation and Resources for Prevention, Inc.

Dr. Barrett is a Certified Vocational Evaluation Specialist and a certified consultant for Performax Systems International, Inc. He holds certification as a Superintendent of Schools and as a Professional Counselor. He is a member of the Association for Training and Development, the American Association for Counseling and Development and Phi Delta Kappa's International Educational Fraternity.

### About the Career Assessment Center . . .

The Career Assessment Center, Inc is a professional career counseling, testing and consulting firm assisting Business and Industry, Governmental Agencies, Educational Institutions, and Private Citizens.

Established in 1980, the Center offers a full range of services to assist clients in making a better match between individuals' potential for success and the current labor market. These services are aimed at improving the efficiency and effectiveness of existing vocational training programs, business and industry's selection and promotional practices, and educational programs in schools.

The firm provides expertise on a daily or project basis. Its resources can provide information and services that usually are available only in large companies with corporate staffs.

As an independent firm, the Career Assessment Center is large enough to attract and keep highly qualified professionals; and small enough to provide personal service to each client. It limits the number of clients handled by each professional in order to assure this individual approach.

In the final analysis, experience is what the Center's clients are buying when they purchase services. Practical experience, combined with progressive technical training, assures clients the best quality service.

The Center's professional staff has experience in all areas of the testing and assessment industry, including, but not limited to: achievement testing, aptitude testing, personality testing, interest testing and general intelligence. Projects they have worked on are broad in scope - in Government, Education, Social Service, and Business/Industry.

The Career Assessment Center is pleased to present some of their references with whom they have had the pleasure of working, and who can attest to the quality of its work, upon request.

